

NATURAL RESOURCES CODE
CHAPTER 40. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. SHORT TITLE. This chapter may be cited as the Oil Spill Prevention and Response Act of 1991.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.002. POLICY. (a) The legislature finds and declares that the preservation of the Texas coast is a matter of the highest urgency and priority. It is the policy of this state to keep its coastal waters, rivers, lakes, estuaries, marshes, tidal flats, beaches, and public lands as pristine as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests. Spills, discharges, and escapes of crude oil, petroleum, and other such substances resulting from their handling, storage, and transportation, particularly by vessel, endanger the coastal environment of the state, public and private property on the coast, and the well-being of those deriving their livelihood from marine-related activity in coastal waters. The hazards posed by the handling, storage, and transportation of these substances in the coastal waters are contrary to the paramount interests of the state. These state interests outweigh the economic burdens imposed under this chapter.

(b) The legislature finds and declares that the natural resources of the state and particularly those in the coastal waters of the state offer significant benefits to the citizens of Texas. These natural resources are important for their existence and their recreational, aesthetic, and commercial value. It is the policy of the state to protect these natural resources and to restore, rehabilitate, replace, and/or acquire the equivalent of these natural resources with all deliberate speed when they have been damaged. The legislature finds and declares that it is difficult to assess the value of these natural resources and to quantify injury to natural resources at a reasonable cost. The procedures and protocols utilized by the trustees must therefore consider the unique characteristics of each spill incident and the location of the natural resources affected. It is the intent of the legislature that natural resource damage assessment methodologies be developed for the purpose of reasonably valuing the natural resources of the State of Texas in the event of an oil spill and that the state recover monetary damages or have actions commenced by the spiller as early as possible to expedite the restoration, rehabilitation, and/or replacement of injured natural resources.

(c) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

(1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;

(2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges; and

(3) administer a fund to provide for funding these activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

(d) The legislature declares that it is the intent of this chapter to support and complement the Oil Pollution Act of 1990 (Pub. L. 101-380) and other federal law, specifically those provisions relating to the national contingency plan for cleanup of oil and hazardous substance spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resources trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.265, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 1, eff. Sept. 1, 2003.

Sec. 40.003. DEFINITIONS. In this chapter:

(1) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(2) "Coastal waters" means the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by

vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Comprehensive assessment method" means a method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury to natural resources resulting from an unauthorized discharge of oil.

(5) "Comptroller" means the comptroller of public accounts.

(6) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate.

(7)(A) "Damages" means compensation:

(i) to an owner, lessee, or trustee for any direct, documented loss of, injury to, or loss of use of any real or personal property or natural resources injured by an unauthorized discharge of oil;

(ii) to a state or local government for any direct, documented net loss of taxes or net costs of increased entitlements or public services; or

(iii) to persons, including but not limited to holders of an oyster lease or permit; persons owning, operating, or employed on commercial fishing, oystering, crabbing, or shrimping vessels; persons owning, operating, or employed by seafood processing concerns; and others similarly economically reliant on the use or acquisition of natural resources for any direct, documented loss of income, profits, or earning capacity from the inability of the claimant to use or acquire natural resources arising solely from injury to the natural resources from an unauthorized discharge of oil.

(B) With respect to natural resources, "damages" includes the cost to assess, restore, rehabilitate, or replace injured natural resources, or to mitigate further injury, and their diminution in value after such restoration, rehabilitation, replacement, or mitigation.

(8) "Discharge of oil" means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters or at a place adjacent to coastal waters where, unless controlled or removed, an imminent threat of pollution to coastal waters exists.

(9) "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be recognized as a discharge cleanup organization, provided the commissioner or the United States properly certifies or classifies the organization.

(10) "Federal fund" means the federal Oil Spill Liability Trust Fund.

(11) "Fund" means the coastal protection fund.

(12) "Harmful quantity" means that quantity of oil the discharge of which is determined by the commissioner to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(13) "Hazardous substance" means any substance, except oil, designated as hazardous by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and designated by the Texas Commission on Environmental Quality.

(14) "Marine terminal" means any terminal facility used for transferring crude oil to or from vessels.

(15) "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and

Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(16) "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(17) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Commission on Environmental Quality.

(18) "Owner" or "operator" means:

(A) any person owning, operating, or chartering by demise a vessel; or

(B) any person owning a terminal facility or a person operating a terminal facility by lease, contract, or other form of agreement.

(19) "Person in charge" means the person on the scene who is directly responsible for a terminal facility or vessel when a discharge of oil occurs or a particular duty arises under this chapter.

(20) "Person responsible" or "responsible person" means:

(A) the owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate;

(B) in the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment; and

(C) any other person who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

(21) "Pollution" means the presence of harmful quantities of oil from an unauthorized discharge in coastal waters or in or on adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes.

(22) "Response costs" means:

(A) with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this chapter, and costs of any reasonable measures to prevent or limit damage to the public health, safety, or welfare, public or private property, or natural resources; or

(B) with respect to an actual or threatened discharge of a hazardous substance, only costs incurred to supplement the response operations of the Texas Commission on Environmental Quality.

(23) "Terminal facility" or "facility" means any waterfront or offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge of oil from the facility could threaten coastal waters, including but not limited to any such facility owned or operated by a public utility or a governmental or quasi-governmental body, but does not include any temporary storage facilities used only in connection with the containment and cleanup of unauthorized discharges of oil.

(24) "Trained personnel" means one or more persons who have satisfactorily completed an appropriate course of instruction developed under Section 40.302 of this code or all other training requirements as determined by the commissioner.

(25) "Trustee" means a natural resources trustee of the state as designated by the governor under federal law.

(26) "Unauthorized discharge of oil" means any discharge of oil, or any discharge of oil emanating from a vessel into waters adjoining and accessible from coastal waters, that is not authorized by a federal or state permit.

(27) "Unauthorized discharge of hazardous substances" means a spill or discharge subject to Subchapter G, Chapter 26, Water Code.

(28) "Vessel" includes every description of

watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

(29) Repealed by Acts 1995, 74th Leg., ch. 76, art. 11, Sec. 11.334(a), eff. Sept. 1, 1995.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.054, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 776, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.266, 11.334(a), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 2, eff. Sept. 1, 2003.

Sec. 40.004. ADMINISTRATION OF OIL SPILL RESPONSE AND CLEANUP. (a) The General Land Office, under the direction and control of the commissioner, is the state's lead agency for response to actual or threatened unauthorized discharges of oil and for cleanup of pollution from unauthorized discharges of oil. The commissioner shall administer this chapter and direct all state discharge response and cleanup operations resulting from unauthorized discharges of oil.

(b) All persons and all other officers, agencies, and subdivisions of the state shall carry out response and cleanup operations related to unauthorized discharges of oil subject to the authority granted to the commissioner under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.005. ADMINISTRATION OF HAZARDOUS SUBSTANCE SPILL RESPONSE AND CLEANUP. The General Land Office, under the direction and control of the commissioner, is the state's lead agency for initiating response to all actual or threatened unauthorized discharges of oil. In the event of an unauthorized discharge of a hazardous substance, nothing in this chapter shall preclude the Texas Commission on Environmental Quality from at the earliest time practicable assuming response and cleanup duties pursuant to Subchapter G, Chapter 26, Water Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.267, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 3, eff. Sept. 1, 2003.

Sec. 40.007. GENERAL POWERS AND DUTIES. (a) The commissioner may promulgate rules necessary and convenient to the administration of this chapter.

(b) The commissioner shall by rule establish procedures under Chapter 2001, Government Code for all hearings required by this chapter. The commissioner may administer oaths, receive evidence, issue subpoenas to compel attendance of witnesses and production of evidence related to hearings, and make findings of fact and decisions with respect to administering this chapter.

(c) The commissioner may contract with any public agency or private person or other entity, including entering into cooperative agreements with the federal government, acquire and dispose of real or personal property, delegate responsibility for implementing the requirements of this chapter, and perform any other act within or without the boundaries of this state necessary to administer this chapter.

(d) If the commissioner finds it necessary to enter property to conduct a vessel or terminal facility audit, inspection, or drill authorized under this chapter or to respond to an actual or threatened unauthorized discharge of oil, the commissioner may enter the property after making a reasonable effort to obtain consent to enter the property.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.008. RAILROAD COMMISSION AUTHORITY. The Railroad Commission of Texas shall continue to exercise its authority pursuant to Section 91.101 of this code and Section 26.131, Water Code, to issue and enforce rules, permits, and orders to prevent pollution of surface and subsurface waters in the state by activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas by pipeline. Nothing in this chapter preempts the jurisdiction of the Railroad Commission of Texas under Subchapter E, Chapter 121, Utilities Code, and Chapter 117, Natural Resources Code, over pipeline transportation of gas and hazardous liquids and over gas and hazardous liquid pipeline facilities.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.39, eff. Sept. 1,

1999.

SUBCHAPTER B. DISCHARGE RESPONSE

Sec. 40.051. NOTIFICATION. On notification of an actual or threatened unauthorized discharge of oil, the commissioner shall act to assess the discharge and prevent, abate, or contain any pollution from the discharge.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.052. HAZARDOUS SUBSTANCES DISCHARGES. If the unauthorized discharge involves predominantly a hazardous substance, the Texas Commission on Environmental Quality shall carry out responsibility for abatement, containment, removal, and cleanup of the hazardous substances discharged, pursuant to Subchapter G, Chapter 26, Water Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.267, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER C. OIL SPILL PREVENTION AND RESPONSE

Sec. 40.101. NOTIFICATION AND RESPONSE. (a) Any person responsible for an unauthorized discharge of oil or the person in charge of any vessel or a terminal facility from or at which an unauthorized discharge of oil has occurred, as soon as that person has knowledge of the discharge, shall:

(1) immediately notify the commissioner of the discharge; and

(2) undertake all reasonable actions to abate, contain, and remove pollution from the discharge.

(b) If the persons responsible or in charge are unknown or appear to the commissioner to be unwilling or unable to abate, contain, and remove pollution from an unauthorized discharge of oil in an adequate manner, the commissioner may abate, contain, and remove pollution from the discharge and may contract with and appoint agents who shall operate under the direction of the commissioner.

(c) In order to prevent duplication of effort among state agencies, the commissioner shall utilize the expertise of the Texas Commission on Environmental Quality on technical and scientific actions, including but not limited to:

(1) taking samples in the spill area;

(2) monitoring meteorological conditions that may affect spill response operations; and

(3) regulating disposal of spilled material.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.269, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 5, eff. Sept. 1, 2003.

Sec. 40.102. RESPONSE COORDINATION. (a) In responding to actual or threatened unauthorized discharges of oil, the commissioner may appoint a state-designated on-scene coordinator to act in the commissioner's place.

(b) If the unauthorized discharge of oil is subject to the national contingency plan, in responding to the discharge the commissioner or the state-designated on-scene coordinator shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan.

(c) The commissioner or the state-designated on-scene coordinator may act independently to the extent no federal on-scene coordinator or authorized agency or official of the federal government has assumed federal authority to oversee, coordinate, and direct response operations.

(d) The state or federal on-scene coordinator may authorize the decanting of recovered water during containment, cleanup, and response activities resulting from an unauthorized discharge of oil.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 4, eff. Sept. 1, 1993.

Sec. 40.103. ASSISTANCE AND COMPENSATION. (a) Subject to the commissioner's authority under this chapter, any person or discharge cleanup organization may assist in abating, containing, or removing pollution from any unauthorized discharge of oil. This chapter does not affect any rights not inconsistent with this chapter that any such person or organization may have against any third party whose acts or omissions caused or contributed to the unauthorized discharge.

(b) Any person or discharge cleanup organization that renders assistance in abating, containing, or removing pollution from any unauthorized discharge of oil may receive compensation from the fund for response costs, provided the commissioner approves compensation prior to the assistance being rendered. The commissioner, on petition and for good cause shown, may waive the prior approval prerequisite.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 6, eff. Sept. 1, 2003.

Sec. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS. (a) No action taken by any person or discharge cleanup organization to abate, contain, or remove pollution from an unauthorized discharge of oil, whether such action is taken voluntarily, or pursuant to the national contingency plan, or pursuant to a discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge.

(b) No person or discharge cleanup organization that voluntarily, or pursuant to the national contingency plan, or pursuant to any discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, renders assistance or advice in abating, containing, or removing pollution from an unauthorized discharge of oil is liable for response costs, damages, or civil penalties resulting from acts or omissions committed in rendering such assistance or advice, except for acts or omissions of gross negligence or wilful misconduct.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 7, eff. Sept. 1, 2003.

Sec. 40.105. EQUIPMENT AND PERSONNEL. The commissioner may establish and maintain equipment and trained personnel at places the commissioner determines may be necessary to facilitate response operations.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.106. REFUSAL TO COOPERATE. (a) If a responsible person, or a person or discharge cleanup organization under the control of a responsible person, participating in operations to abate, contain, and remove pollution from any unauthorized discharge of oil, reasonably believes that any directions or orders given by the commissioner or the commissioner's designee under this chapter will unreasonably endanger public safety or natural resources or conflict with directions or orders of the federal on-scene coordinator, the party may refuse to comply with the direction or orders.

(b) The party shall state at the time of refusal the reason or reasons why the party refuses to comply. The party shall give the commissioner written notice of the reason or the reasons for the refusal within 48 hours of the refusal.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.107. NATURAL RESOURCES DAMAGES. (a)(1) In any action to recover natural resources damages, the amount of damages established by the commissioner in conjunction with the trustees shall create a rebuttable presumption of the amount of such damages.

(2) The commissioner shall represent the consensus position of the trustees whenever a collective decision or agreement is required by this section.

(3) Whenever trustees cannot achieve a consensus, the commissioner may invoke mediation to settle any disputed matter related to this section. The mediation shall be immediately commenced and shall be concluded within 10 days of its commencement. The trustees shall abide by the consensus achieved through mediation.

(4) The trustees shall enter into a memorandum of agreement which describes the mediation process of Subdivision (3) of this subsection.

(b) The commissioner may establish the rebuttable presumption by submitting to the court a written report of the amounts computed or expended according to the state plan. The written report shall be admissible in evidence.

(c)(1) The commissioner, in conjunction with the trustees,

shall develop an inventory that identifies and catalogs the physical locations, the seasonal variations in location, and the current condition of natural resources; provides for data collection related to coastal processes; and identifies the recreational and commercial use areas that are most likely to suffer injury from an unauthorized discharge of oil. The inventory shall be completed by September 1, 1995.

(2) The physical locations surveyed for the inventory of natural resources shall include, at a minimum, the following priority areas:

- (A) the Galveston Bay system and the Houston Ship Channel;
- (B) the Corpus Christi Bay system;
- (C) the lower Laguna Madre;
- (D) Sabine Lake; and
- (E) federal and state wildlife refuge areas.

(3) The current condition of selected natural resources inventoried and cataloged shall be determined by, at a minimum, a baseline sampling and analysis of current levels of constituent substances selected after considering the types of oil most frequently transported through and stored near coastal waters.

(4) The commissioner shall adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil. As developed through negotiated rulemaking with the trustees and other interested parties, the procedures and protocols shall require the trustees to assess natural resource damages by considering the unique characteristics of the spill incident and the location of the natural resources affected. These procedures and protocols shall be adopted by rule, by the trustee agencies after negotiation, notice, and public comment, by June 1, 1994.

(5) The administrative procedures and protocols shall include provisions which address:

(A) notification by the commissioner to all trustees in the event of an unauthorized discharge of oil;

(B) coordination with and among trustees, spill response agencies, potentially responsible parties, experts in science and economics, and the public; and

(C) participation in all stages of the assessment process by the potentially responsible party, as consistent with trustee responsibilities.

(6) The administrative procedures and protocols shall also require the trustees to:

(A) assist the on-scene coordinator, during spill response activities and prior to the time that the state on-scene coordinator determines that the cleanup is complete, in predicting the impact of the oil and in devising the most effective methods of protection for the natural resources at risk;

(B) identify appropriate sampling and data collection techniques to efficiently determine the impact on natural resources of the unauthorized discharge of oil;

(C) initiate, within 24 hours after approval for access to the site by the on-scene coordinator, an actual field investigation which may include sampling and data collection; the protocols shall require that the responsible party and the trustees be given, on request, split samples and copies of each other's photographs utilized in assessing the impact of the unauthorized discharge of oil; and

(D) establish plans, including alternatives that are cost-effective and efficient, to satisfy the goal of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources.

(7)(A) The administrative procedures and protocols shall also include the following types of assessment procedures and deadlines for their completion:

(i) an expedited assessment procedure which may be used in situations in which the spill has limited observable mortality and restoration activities can be speedily initiated and/or in which the quantity of oil discharged does not exceed 1,000 gallons; the purpose of utilizing the expedited assessment procedure is to allow prompt initiation of restoration, rehabilitation, replacement, and/or acquisition of an equivalent natural resource without lengthy analysis of the impact on affected natural resources; this procedure shall, at a minimum, require that the trustees consider the following items:

(aa) the quantity and quality of oil discharged;

(bb) the time period during which coastal waters are affected by the oil and the physical extent of the impact;

(cc) the condition of the natural resources prior to the unauthorized discharge of oil; and

(dd) the actual costs of restoring, rehabilitating, and/or acquiring the equivalent of the injured natural resources;

(ii) a comprehensive assessment procedure for use in situations in which expedited or negotiated assessment procedures are not appropriate; and

(iii) any other assessment method agreed upon between the responsible person and the trustees, consistent with their public trust duties.

(B) The trustees shall determine, within 60 days of the determination by the on-scene coordinator that the cleanup is complete, whether:

(i) action to restore, rehabilitate, or acquire an equivalent natural resource is required;

(ii) an expedited assessment which may include early commencement of restoration, rehabilitation, replacement, and/or acquisition activities, may be required; and

(iii) a comprehensive assessment is necessary.

(C) The trustees may petition the commissioner for a longer period of time to make the above determination by showing that the full impact of the discharge on the affected natural resources cannot be determined in 60 days.

(D) The trustees shall complete the comprehensive assessment procedure within 20 months of the date of the determination by the state on-scene coordinator that the cleanup is complete. The trustees may petition the commissioner for a longer period of time to complete the assessment by showing that the full impact of the discharge on the affected natural resources cannot be determined in 20 months.

(E) Any assessment generated by the trustees shall be reasonable and have a rational connection to the costs of conducting the assessment and of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. The trustees shall ensure that the cost of any restoration, rehabilitation, replacement, or acquisition project shall not be disproportionate to the value of the natural resource before the injury. The trustees shall utilize the most cost-effective method to achieve restoration, rehabilitation, replacement, or acquisition of an equivalent resource. Furthermore, the trustees shall take into account the quality of the actions undertaken by the responsible party in response to the spill incident, including but not limited to containment and removal actions and protection and preservation of natural resources.

(F) The potentially responsible party shall make full payment within 60 days of the completion of the assessment by the trustees or, if mediation pursuant to this paragraph is conducted, within 60 days of the conclusion of the mediation. To facilitate an expedited recovery of funds for natural resource restoration and to assist the trustees and the responsible party in the settlement of disputed natural resource damage assessments at their discretion and at any time, all disputed natural resource damage assessments shall be referred to mediation as a prerequisite to the jurisdiction of any court. Results of the mediation and any settlement offers tendered during the mediation shall be treated as settlement negotiations for the purposes of admissibility in a court of law. Either the trustees or the potentially responsible person may initiate the mediation process, after an assessment has been issued, by giving written notice to the commissioner, who shall give written notice to all parties. One mediator shall be chosen by the trustees and one mediator shall be chosen by the responsible parties. Within 45 days of the receipt of the assessment from the trustees, the mediators shall be designated. The mediation shall end 135 days after the receipt of the assessment from the trustees.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 5, eff. Sept. 1,

1993; Acts 2003, 78th Leg., ch. 146, Sec. 8, 9, eff. Sept. 1, 2003.

Sec. 40.108. DERELICT VESSELS AND STRUCTURES. (a) A person may not, without the consent of the commissioner, leave, abandon, or maintain any structure or vessel in or on coastal waters, on public or private lands or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition and the commissioner finds the structure or vessel to be:

(1) involved in an actual or threatened unauthorized discharge of oil;

(2) a threat to public health, safety, or welfare;

(3) a threat to the environment; or

(4) a navigation hazard.

(b) The commissioner may remove and dispose of or contract for the removal and disposal of any vessel or structure described in Subsection (a) and may recover the costs of removal and disposal from the owner or operator of the vessel or structure. The recovered costs shall be deposited to the credit of the coastal protection fund established by Section 40.151.

(c) The commissioner must comply with the requirements of Section 40.254 before removing or disposing of a vessel or structure, except that the commissioner may remove a vessel or structure involved in an actual or threatened unauthorized discharge of oil without a hearing.

(d) The commissioner may dispose of the vessel or structure in any reasonable and environmentally sound manner. The commissioner shall give preference to disposal options that generate a monetary benefit from the vessel or structure. If no value may be generated from the vessel or structure, the commissioner shall select the least costly method. Proceeds from the sale of the vessel or structure shall be used for removal and disposal costs, and any proceeds in excess of the cost of removal and disposal shall be deposited to the credit of the coastal protection fund.

(e) The commissioner by rule may establish a system for prioritizing the removal or disposal of vessels or structures under this section.

(f) This section does not impose a duty on the state to remove or dispose of a vessel or structure or to warn of a hazardous condition on state land.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2005, 79th Leg., ch. 216, Sec. 1, eff. Sept. 1, 2005.

Sec. 40.109. REGISTRATION OF TERMINAL FACILITIES. (a) A person may not operate or cause to be operated a terminal facility without a discharge prevention and response certificate issued pursuant to rules promulgated under this chapter.

(b)(1) As a condition precedent to the issuance or renewal of a certificate, the commissioner shall require satisfactory evidence that:

(A) the applicant has implemented a discharge prevention and response plan consistent with state and federal plans and regulations for prevention of unauthorized discharges of oil and abatement, containment, and removal of pollution when such discharge occurs; and

(B) the applicant can provide, directly or through membership or contract with a discharge cleanup organization, all required equipment and trained personnel to prevent, abate, contain, and remove pollution from an unauthorized discharge of oil as provided in the plan.

(2) A terminal facility response plan that complies with requirements under federal law and regulations for a terminal facility response plan satisfies the requirements of Subdivision (1)(A) of this subsection.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.110. GENERAL TERMS. (a) Discharge prevention and response certificates are valid for a period of five years. The commissioner by rule shall require each registrant to report annually on the status of its discharge prevention and response plan and response capability.

(b) The commissioner may review a certificate at any time there is a material change affecting the terminal facility's discharge prevention and response plan or response capability.

(c) Certificates shall be issued subject to such terms and conditions as the commissioner may determine are reasonably

necessary to carry out the purposes of this chapter.

(d) Certificates issued to any terminal facility shall take into account the vessels used to transport oil to or from the facility.

(e) The commissioner by rule shall establish and require payment of a reasonable fee for processing applications for certificates. This fee is in addition to the fee levied under Section 40.154 of this code and must be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining the certificates and reasonable inspections.

(f) Repealed by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Sec. 40.111. INFORMATION. Each applicant for a discharge prevention and response certificate shall submit information, in a form satisfactory to the commissioner, describing the following:

(1) the barrel or other measurement capacity of the terminal facility;

(2) the dimensions and barrel capacity of the largest vessel docking at or providing service from the terminal facility;

(3) the storage and transfer capacities and average daily throughput of the terminal facility;

(4) the types of oil stored, handled, or transferred at the terminal facility;

(5) information related to implementation of the applicant's discharge prevention and response plan, including:

(A) all response equipment such as vehicles, vessels, pumps, skimmers, booms, bioremediation supplies and application devices, dispersants, chemicals, and communication devices to which the terminal facility has access, as well as the estimated time required to deploy the equipment after an unauthorized discharge of oil;

(B) the trained personnel that are required and available to deploy and operate the response equipment, as well as the estimated time required to deploy the personnel after an unauthorized discharge of oil;

(C) the measures employed to prevent unauthorized discharges of oil; and

(D) the terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs;

(6) the source, nature of, and conditions of financial responsibility for response costs and damages; and

(7) any other information necessary or appropriate to the review of a registrant's discharge prevention and response capabilities.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.112. ISSUANCE. On compliance with Sections 40.109 through 40.111 of this code and on payment of the certificate application fee, the commissioner shall issue the applicant a discharge prevention and response certificate covering the terminal facility.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.113. SUSPENSION. If the commissioner determines that a registrant does not have a discharge prevention and response plan or that the registrant's preventive measures or containment and cleanup capabilities are inadequate, the commissioner may, after notice and hearing as provided in Section 40.254 of this code, suspend the registrant's certificate until such time as the registrant complies with the requirements of this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.114. CONTINGENCY PLANS FOR VESSELS. (a) Any vessel with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operates in coastal waters or waters adjoining and accessible from coastal waters shall maintain a written vessel-specific discharge prevention and response plan that satisfies the requirements of rules promulgated under this chapter. This section shall not apply to any dedicated response vessel or to any other vessel for activities within state waters related solely to the containment and cleanup of oil, including response-related training or drills.

(b) The plan must:

(1) provide for response actions including

notification to the commissioner, verification of the unauthorized discharge, identification of the pollutant, assessment of the discharge, vessel stabilization, and discharge abatement and mitigation;

(2) designate an on-board spill officer who satisfies the definition of trained personnel as provided by Section 40.003 of this code and who shall train the vessel's crew to conduct unauthorized discharge response operations according to the plan and shall coordinate on-board response operations in the event of an unauthorized discharge; and

(3) contain any other provision the commissioner reasonably requires by rule.

(c) A discharge prevention and response plan that complies with requirements under federal laws and regulations for a vessel-specific plan satisfies the requirements of Subsections (a) and (b) of this section.

(d) The owner or operator of a vessel subject to this section must be able to provide, directly or through membership or contract with a discharge cleanup organization, all required equipment and trained personnel to prevent, abate, contain, and remove pollution from an unauthorized discharge of oil as provided in the plan.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 6, eff. Sept. 1, 1993.

Sec. 40.116. AUDITS, INSPECTIONS, AND DRILLS. The commissioner may subject a vessel subject to Section 40.114 of this code or a terminal facility to an announced or unannounced audit, inspection, or drill to determine the discharge prevention and response capabilities of the terminal facility or vessels. Any vessel drill conducted by the commissioner shall be in cooperation and conjunction with the United States Coast Guard, and the commissioner's participation may not interfere with the schedule of the vessel.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 10, eff. Sept. 1, 2003.

Sec. 40.117. REGULATIONS. (a) The commissioner shall from time to time adopt, amend, repeal, and enforce reasonable regulations, including but not limited to those relating to the following matters regarding the unauthorized discharge of oil:

(1) standards and requirements for discharge prevention and response capabilities of terminal facilities and vessels;

(2) standards, procedures, and methods of designating persons in charge and reporting unauthorized discharges and violations of this chapter;

(3) standards, procedures, methods, means, and equipment to be used in the abatement, containment, and removal of pollution;

(4) development and implementation of criteria and plans of response to unauthorized discharges of various degrees and kinds, including realistic worst-case scenarios;

(5) requirements for complete and thorough inspections of vessels subject to Section 40.114 of this code and of terminal facilities;

(6) certification of discharge cleanup organizations;

(7) requirements for the safety and operation of vessels, motor vehicles, motorized equipment, and other equipment involved in the transfer of oil at terminal facilities and the approach and departure from terminal facilities;

(8) requirements that required containment equipment be on hand, maintained, and deployed by trained personnel;

(9) requirements for certification as trained personnel;

(10) standards for reporting material changes in discharge prevention and response plans and response capability for purposes of terminal facility certificate reviews; and

(11) such other rules and regulations consistent with this chapter and appropriate or necessary to carry out the intent of this chapter.

(b) Repealed by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1,

2003.

SUBCHAPTER D. PAYMENT OF COSTS AND DAMAGES

Sec. 40.151. COASTAL PROTECTION FUND. (a) The purpose of this subchapter is to provide immediately available funds for response to all unauthorized discharges, for cleanup of pollution from unauthorized discharges of oil, for payment of damages from unauthorized discharges of oil, and for erosion response projects.

(b) The coastal protection fund is established in the state treasury to be used by the commissioner as a nonlapsing revolving fund only for carrying out the purposes of this chapter and of Subchapter H, Chapter 33. To this fund shall be credited all fees, penalties, judgments, reimbursements, proceeds from the sale of a vessel or structure removed under Section 40.108, money forfeited under Section 77.119(e), Parks and Wildlife Code, interest or income on the fund, and charges provided for in this chapter and the fee revenues levied, collected, and credited pursuant to this chapter. The fund shall not exceed \$50 million.

(c) The commissioner may accept grants, gifts, and donations of property, including real property, on behalf of the fund. The commissioner may sell real or personal property accepted on behalf of the fund and shall deposit the proceeds of the sale in the fund.

(d) Any interest in real or personal property acquired by donation, gift, or grant or by using money in the fund shall be held by the commissioner.

(e) Repealed by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.055, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 1058, Sec. 14(a), eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 508, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 146, Sec. 11, 16, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 216, Sec. 2, eff. Sept. 1, 2005.

Sec. 40.152. USE OF FUND. (a) Money in the fund may be disbursed for the following purposes and no others:

(1) administrative expenses, personnel and training expenses, and equipment maintenance and operating costs related to implementation and enforcement of this chapter;

(2) response costs related to abatement and containment of actual or threatened unauthorized discharges of oil incidental to unauthorized discharges of hazardous substances;

(3) response costs and damages related to actual or threatened unauthorized discharges of oil;

(4) assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources damaged by an unauthorized discharge of oil;

(5) in an amount not to exceed \$50,000 annually, the small spill education program;

(6) in an amount not to exceed \$1,250,000 annually, interagency contracts under Section 40.302;

(7) the purchase of response equipment under Section 40.105 within two years of the effective date of this chapter, in an amount not to exceed \$4 million; thereafter, for the purchase of equipment to replace equipment that is worn or obsolete;

(8) other costs and damages authorized by this chapter;

(9) in an amount not to exceed the interest accruing to the fund annually, erosion response projects under Subchapter H, Chapter 33; and

(10) in conjunction with the Railroad Commission of Texas, costs related to the plugging of abandoned or orphaned oil wells located on state-owned submerged lands.

(b) There is hereby appropriated from the fund to the General Land Office, subject to this section, the amounts specified for the purposes of Subdivisions (5) and (6) of Subsection (a) of this section, \$2.5 million for administrative costs under this chapter for the two-year period beginning with the effective date of this chapter, and the actual amounts necessary to pay response costs and damages as provided in this chapter.

(c) Notwithstanding Subsection (a)(9) and the other provisions of this subchapter, the legislature may appropriate to the General Land Office for implementation of the coastal management program under Subchapter F, Chapter 33, and for erosion response projects under Subchapter H, Chapter 33, money from the fund in an amount that exceeds the amount of interest accruing to

the fund annually. This subsection expires September 1, 2007. Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 7, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 508, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 146, Sec. 12, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 899, Sec. 15.01, eff. Aug. 29, 2005.

Sec. 40.153. REIMBURSEMENT OF FUND. The commissioner shall recover to the use of the fund, either from persons responsible for the unauthorized discharge or otherwise liable or from the federal fund, jointly and severally, all sums owed to or expended from the fund. This section does not apply to sums expended under Section 40.152(a)(9).

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1999, 76th Leg., ch. 508, Sec. 8, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 728, Sec. 14.006(a), eff. Sept. 1, 2005.

Sec. 40.154. COASTAL PROTECTION FEE; ADMINISTRATIVE COSTS. (a) There is hereby imposed a fee on every person owning crude oil in a vessel at the time such crude oil is transferred to or from a marine terminal. This fee is in addition to all taxes or other fees levied on crude oil.

(b) The operator of the marine terminal shall collect the fee from the owner of the crude oil and remit the fee to the comptroller unless the owner of the crude oil is registered with the comptroller for remittance of the fee. The fee shall be imposed only once on the same crude oil. The fee shall be paid monthly by the last day of the month following the calendar month in which liability for the fee is incurred.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.155. DETERMINATION OF FEE. (a) Except as otherwise provided in this section, the rate of the fee shall be 1-1/3 cents per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached \$20 million. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds \$20 million.

(b) If the unencumbered balance in the fund falls below \$10 million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

(1) the unencumbered balance in the fund is less than \$20 million;

(2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and

(3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches \$20 million or any lesser amount that the commissioner determines is necessary to pay response costs and damages without substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

(e) For purposes of this section, the unencumbered balance of the fund shall be determined by the unencumbered cash balance of the fund at the end of each month or on the date of a finding under Subsection (c) of this section.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 1058, Sec. 15, eff. Aug. 30, 1995; Acts 2005, 79th Leg., ch. 899, Sec. 15.02, eff. Aug. 29, 2005.

Sec. 40.156. ADMINISTRATION OF FEE. (a) The comptroller shall administer the provisions of this section as provided in

Chapters 101 through 113 of the Tax Code.

(b) In the event the commissioner makes a finding under Section 40.155(c) of this code, the commissioner shall publish the finding in the Texas Register. In the event of any suspension or other reinstatement of the fee, the comptroller shall publish the suspension or reinstatement in the Texas Register at least 30 days prior to the scheduled effective date of the suspension or reinstatement.

(c) In the event of an emergency, the comptroller shall reinstate the fee in accordance with rules promulgated for that purpose.

(d) The fee levied under this section shall be due and collected beginning 60 days after the effective date of this chapter. Contingent upon receipt by the comptroller of such fees, the commissioner may temporarily use general revenue funds, in an amount not to exceed estimated revenues to the coastal protection fund in the fiscal year in which revenues are collected. The general revenue amounts used shall be repaid out of the first fees collected under this chapter, and may be used only for purposes of meeting temporary cash flow needs during the fiscal year. The transfer and repayment of these funds shall be completed by the end of each fiscal year under procedures and standards established by the comptroller.

(e) If refunds are determined to be due, they shall be paid only from the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.157. LIABILITY OF THE FUND. (a) Persons who incur response costs or who are entitled to damages as a result of an unauthorized discharge of oil may receive compensation from the fund.

(b) Any person other than the state seeking compensation from the fund must file a claim with the commissioner. The claimant must provide the commissioner with satisfactory proof of the costs incurred or damages claimed. Each claimant shall make a sworn verification of the claim.

(c) The commissioner shall prescribe appropriate forms and requirements and by rule shall establish procedures for filing claims for compensation from the fund and for response cost reimbursements to other state agencies from the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.158. EXCEPTIONS TO LIABILITY. (a) Except as provided by Subsection (b) of this section, the fund is absolutely liable for:

(1) all proven, reasonable response costs approved by the commissioner under Section 40.103 of this code from an unauthorized discharge of oil;

(2) all natural resources damages from an unauthorized discharge of oil; and

(3) with the exception of those damages proportionately attributable to the negligence or wilful misconduct of the claimant, all other proven damages from the fund from an unauthorized discharge of oil.

(b) A person liable for an unauthorized discharge of a hazardous substance may not file a claim or be reimbursed from the fund for the unauthorized discharge of a hazardous substance. A person responsible for an unauthorized discharge of oil may not file a claim or be reimbursed from the fund except:

(1) if the person responsible is entitled to a defense to liability under Section 40.204 of this code, a claim for response costs and damages may be filed; or

(2) if the person responsible is entitled to a limitation of liability under Section 40.202 of this code, a claim for response costs and damages to the extent that they exceed the applicable limitation may be filed.

(c) No claim may be approved or certified during the pendency of any action by the claimant in court to recover response costs or damages that are the subject of the claim.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.159. CLAIMS FROM DISCHARGES OF OIL. (a)(1) On determining that damage from an unauthorized discharge of oil is likely to occur or has occurred and will result in the filing of claims, the commissioner shall immediately designate the person or persons responsible who, if the designation is not challenged within five days of notice thereof, shall immediately and widely advertise the manner in which the person will accept claims.

(2) If the designation is challenged or the commissioner is otherwise unable to designate a responsible person, the commissioner shall immediately and widely advertise the manner in which the commissioner shall accept claims.

(b)(1) A claimant shall submit any claim exceeding \$50,000 to the designated responsible person. If there is no reasonable response from the designated responsible person within 90 days or in the absence of a designated responsible person as provided under Subsection (a)(2) of this section, the claimant shall submit the claim to the federal fund. If there is no reasonable response from the federal fund within 60 days, the claimant may submit the claim to the fund.

(2) A claimant shall submit any claim less than or equal to \$50,000 to the designated responsible person. If there is no reasonable response from the designated responsible person within 30 days or in the absence of a designated responsible person as provided under Subsection (a)(2) of this section, the claimant may submit the claim to the fund.

(c) Claims must be submitted to the fund by filing with the commissioner not later than 180 days after the periods prescribed in Subsection (b) of this section. Claims not filed within the time allowed are barred as against the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.160. PAYMENT OF AWARDS. (a) The commissioner shall establish the amount of the award. If the claimant accepts the award, the commissioner shall certify the amount of the award and the name of the claimant to the comptroller, who shall pay the award from the fund, subject to Section 40.162 of this code.

(b) If either the claimant or the person or persons determined by the commissioner to be responsible for the unauthorized discharge of oil disagrees with the amount of the award, such person may request a hearing. The commissioner shall hold a hearing and issue an order setting the amount of the award.

(c) Each person's claims arising from a single discharge must be stated in one application. Costs or damages omitted from any claim at the time a claimant accepts an award are waived. The commissioner may make partial final awards toward a single claim.

(d) If a person accepts an award from the fund, it shall bind both the claimant and the commissioner as to all issues covered by the award and may not be further attacked, collaterally or by separate action. The commissioner shall be subrogated to all rights or causes of action of the claimant arising from the unauthorized discharge and covered by the award. The claimant shall have no further cause of action against the person responsible for the discharge.

(e) Claims proceedings under this chapter are not contested cases under Chapter 2001, Government Code and judicial review of such proceedings is not available under that Act.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.161. REIMBURSEMENT OF FUND. (a) The commissioner shall diligently pursue reimbursement to the fund of any sum expended or paid from the fund.

(b) In any action to recover such sums, the commissioner shall submit to the court a written report of the amounts paid from or owed by the fund. The amounts paid from or owed by the fund stated in the report shall create a rebuttable presumption of the amount of the fund's damages. The written report shall be admissible in evidence.

(c) This section does not apply to a sum expended under Section 40.152(a)(9).

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1999, 76th Leg., ch. 508, Sec. 9, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 728, Sec. 14.006(b), eff. Sept. 1, 2005.

Sec. 40.162. AWARDS EXCEEDING FUND. (a) If the total awards against the fund exceed the existing balance of the fund, the claimant or claimants shall be paid from the future income of the fund. Each claimant or claimants shall receive a pro rata share of all money available in the fund until the total amount of awards is paid.

(b) The commissioner by rule may make exceptions to Subsection (a) of this section in cases of hardship. Amounts collected by the fund from the prosecution of actions shall be used

to satisfy the claims as to which such prosecutions relate to the extent unsatisfied.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

SUBCHAPTER E. LIABILITY OF PERSONS RESPONSIBLE

Sec. 40.201. FINANCIAL RESPONSIBILITY. (a) Each owner or operator of a vessel subject to Section 40.114 of this code and operating within coastal waters or waters adjoining and accessible from coastal waters or any terminal facility subject to this code shall establish and maintain evidence of financial responsibility for costs and damages from unauthorized discharges of oil pursuant to federal law or in any other manner provided in this chapter.

(b) If a vessel subject to Section 40.114 of this code or a terminal facility is not required under federal law to establish and maintain evidence of financial responsibility, the owner or operator of that vessel or terminal facility shall establish and maintain evidence in an amount and form prescribed by rules promulgated under this code.

(c) Any owner or operator of a vessel that is a member of any protection and indemnity mutual organization, which is a member of the international group, any other owner or operator that is an assured of the Water Quality Insurance Syndicate, or an insured of any other organization approved by the commissioner, and which is covered for oil pollution risks up to the amounts required by federal law is in compliance with the financial responsibility requirements of this chapter. The commissioner shall specifically designate the organizations and the terms under which owners and operators of vessels shall demonstrate financial responsibility.

(d) After an unauthorized discharge of oil, a vessel shall remain in the jurisdiction of the commissioner until the owner, operator, or person in charge has shown the commissioner evidence of financial responsibility. The commissioner may not detain the vessel longer than 12 hours after the vessel has proven financial responsibility.

(e) In addition to any other remedy or enforcement provision, the commissioner may suspend a registrant's discharge prevention and response certificate or may deny a vessel entry into any port in coastal waters for failure to comply with this section.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 8, eff. Sept. 1, 1993.

Sec. 40.202. RESPONSE COSTS AND DAMAGES LIABILITY. (a) Subject to Subsection (c) of this section, any person responsible for an actual or threatened unauthorized discharge of oil from a vessel is liable for:

(1) all response costs from the actual or threatened discharge to an amount not to exceed \$1 million for vessels of 300 gross tons or less that do not carry oil as cargo, to an amount not to exceed \$5 million for vessels of 8,000 gross tons or less or, for vessels greater than 8,000 gross tons, to an amount equal to \$600 per gross ton of such vessel, not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code; and

(2) in addition to response costs, all damages other than natural resources damages from the actual or threatened discharge to an amount not to exceed \$1 million for vessels of 300 gross tons or less that do not carry oil as cargo, to an amount not to exceed \$5 million for vessels of 8,000 gross tons or less or, for vessels greater than 8,000 gross tons, to an amount equal to \$600 per gross ton of such vessel, not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code.

(b) Subject to Subsection (c) of this section, any person responsible for an actual or threatened unauthorized discharge of oil from a terminal facility is liable for:

(1) all response costs from the actual or threatened discharge to an amount not to exceed \$5 million, except any person responsible for an actual or threatened unauthorized discharge of oil from an offshore drilling or production facility is liable for all response costs from the actual or threatened discharge; and

(2) in addition to response costs, all damages other than natural resources damages from the actual or threatened discharge to an amount not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code, except any person responsible for an actual or threatened unauthorized discharge of oil from an offshore drilling or production facility is liable for all such damages from the actual or threatened discharge.

(c)(1) If any actual or threatened unauthorized discharge of oil was the result of gross negligence or wilful misconduct, the person responsible for such gross negligence or wilful misconduct is liable for the full amount of all response costs and damages.

(2) "Wilful misconduct" under this chapter includes intentional violation of state, federal, or local safety, construction, or operating standards or requirements, including the requirements of this chapter.

(3) If an actual or threatened unauthorized discharge of oil is not eligible for expenditures from the federal fund, the person responsible is liable for the full amount of all response costs and damages incurred by the fund.

(4) If the responsible person unreasonably fails to cooperate with discharge response and cleanup operations as provided in Section 40.106 of this code, the responsible person is liable for the full amount of all response costs and damages.

(d) Liability limits established under this section are exclusive of interest or attorney fees to which the state is entitled to recover under this code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.203. LIABILITY FOR NATURAL RESOURCES DAMAGES. (a) The commissioner, on behalf of the trustees, shall seek reimbursement from the federal fund for damages to natural resources in excess of the liability limits prescribed in Section 40.202 of this code. If that request is denied or additional money is required following receipt of the federal money, the commissioner has the authority to pay the requested reimbursement from the fund for a period of two years from the date the federal fund grants or denies the request for reimbursement.

(b) In addition to liability under Section 40.202 of this code, persons responsible for actual or threatened unauthorized discharges of oil are liable for natural resources damages attributable to the discharge.

(c) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a vessel shall not exceed the following:

(1) for a vessel that carries oil in bulk, as cargo, the greater of:

(A) \$1,200 per gross ton; or

(B)(i) in the case of a vessel greater than 3,000 gross tons, \$10 million; or

(ii) in the case of a vessel of 3,000 gross tons or less, \$2 million; or

(2) for any other vessel, \$600 per gross ton or \$500,000, whichever is greater.

(d) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a terminal facility shall not exceed the following:

(1) for each terminal facility with a capacity:

(A) above 150,000 barrels, \$70 per barrel not to exceed \$350,000,000;

(B) from 70,001 to 150,000 barrels, \$10,000,000;

(C) from 30,001 to 70,000 barrels, \$5,000,000;

(D) from 10,000 to 30,000 barrels, \$2,000,000;

(2) for any other terminal, \$500,000.

(e) The commissioner shall ensure that there will be no double recovery of damages or response costs.

(f) If any actual or threatened unauthorized discharge of oil was the result of gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation, the person responsible for such gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation is liable for the full amount of all damages to natural resources.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 9, eff. Sept. 1, 1993.

Sec. 40.204. DEFENSES. The only defense of a person responsible for an actual or threatened unauthorized discharge of oil shall be to plead and prove that the discharge resulted solely from any of the following or any combination of the following:

(1) an act of war or terrorism;

(2) an act of government, either state, federal, or local;

(3) an unforeseeable occurrence exclusively occasioned by the violence of nature without the interference of any human act or omission; or

(4) the wilful misconduct or a negligent act or omission of a third party, other than an employee or agent of the person responsible or a third party whose conduct occurs in connection with a contractual relationship with the responsible person, unless the responsible person failed to exercise due care and take precautions against foreseeable conduct of the third party.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.205. THIRD PARTIES. If a responsible person alleges a defense under Section 40.204(4) of this code, the responsible person shall pay all response costs and damages. The responsible person shall be subrogated to any rights or cause of action belonging to those to whom such payment is made.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

SUBCHAPTER F. ENFORCEMENT

Sec. 40.251. PENALTIES. (a) A person who intentionally commits any of the following acts in violation of Subchapter C, D, or E shall be guilty of a Class A misdemeanor:

(1) operating a terminal facility or vessel without a discharge prevention and response plan;

(2) operating a terminal facility or vessel without establishing and maintaining financial responsibility;

(3) causing, allowing, or permitting an unauthorized discharge of oil;

(4) making a material false statement with a fraudulent intent in an application or report;

(5) with respect to the person in charge of a vessel from which an unauthorized discharge of oil emanates, taking the vessel from the jurisdiction of the commissioner prior to proving financial responsibility; or

(6) leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition.

(b) A person responsible for an unauthorized discharge of oil or the person in charge of any vessel or terminal facility from or at which an unauthorized discharge of oil emanates, who knows or has reason to know of the discharge and who fails to give immediate notification of the discharge to the commissioner, shall be:

(1) subject to a civil penalty of not less than \$500 nor more than \$250,000 for an individual or \$500,000 for a corporation, partnership, association, or other entity; and

(2) guilty of a Class A misdemeanor.

(c) A person responsible for an unauthorized discharge of oil shall be subject to a civil penalty of not less than \$250 nor more than \$25,000 for each day of the discharge, or not more than \$1,000 per barrel of oil discharged.

(d) A person responsible for an unauthorized discharge of oil who without sufficient cause fails to abate, contain, and remove pollution from the discharge pursuant to applicable federal and state requirements and plans shall be liable for a civil penalty of not more than \$25,000 for each day the pollution is not abated, contained, and removed, or not more than three times the costs incurred by the fund as a result of the discharge.

(e) A person who with a fraudulent intent makes or causes to be made any material false statement in filing a claim or reporting any information concerning an actual or threatened unauthorized discharge of oil in response to the requirements of this chapter shall be guilty of a third degree felony.

(f) A person who violates any provision, rule, or order issued under Subchapter C, D, or E of this chapter shall be subject to a civil penalty of not less than \$100 nor more than \$10,000 per violation for each day of violation, not to exceed a maximum of \$125,000.

(g) It is a defense to prosecution for a criminal offense under Subchapter C, D, or E of this chapter that the conduct complained of was committed pursuant to response or cleanup operations and was authorized by the national contingency plan or the state coastal discharge contingency plan, by a discharge response plan required under this chapter, or by an authorized federal or state official.

(h) The defenses to liability under Section 40.204 of this

code shall be defenses to the assessment of penalties under this chapter for any unauthorized discharge of oil.
Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 2005, 79th Leg., ch. 216, Sec. 3, eff. Sept. 1, 2005.

Sec. 40.252. ADMINISTRATIVE PENALTIES. The commissioner may assess administrative penalties for the violations and in the amounts established in Section 40.251 of this code. In determining the amount of penalties, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations;
and

(5) any other matter that justice requires.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.253. CUMULATIVE ENFORCEMENT. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.254. ORDERS AND HEARINGS. (a) The commissioner shall assess administrative penalties, pursue suspension of terminal facility discharge prevention and response certificates, and pursue the removal or disposal of derelict structures or vessels in accordance with this section.

(b) The commissioner shall issue a preliminary report if the commissioner, after an investigation, concludes that:

(1) a violation has occurred for which:

(A) a penalty should be assessed; or

(B) a discharge prevention and response certificate should be suspended; or

(2) there is a need for removal or disposal of a derelict vessel or structure.

(b-1) The preliminary report must:

(1) state the facts that support the commissioner's conclusion;

(2) recommend:

(A) that a penalty be imposed;

(B) that a certificate be suspended;

(C) that a derelict vessel or structure be removed or disposed of; or

(D) any combination of remedies under Paragraphs (A)-(C); and

(3) if a penalty under Subdivision (2)(A) is recommended, recommend the amount of the penalty.

(c) The commissioner shall serve written notice of the preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the findings;

(2) a statement of the commissioner's recommendations;

(3) a statement of the right of the person charged with the violation to a hearing; and

(4) a copy of the preliminary report.

(c-1) The notice required by Subsection (c) must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person is unknown, by posting a copy of the notice on the facility, vessel, or structure and by publishing notice in a newspaper with general circulation in the county in which the facility, vessel, or structure is located at least two times within 10 consecutive days.

(d) Not later than the 20th day after the date on which the notice is served, the person charged with the violation may consent in writing to the report, including the commissioner's recommendations, or make a written request for a hearing.

(e)(1) If the person charged with the violation consents to the commissioner's recommendations or does not timely respond to the notice, the commissioner by order shall take the recommended action or order a hearing to be held on the findings and recommendations in the report.

(2) If the commissioner takes the recommended action, the commissioner shall serve written notice of the decision to the person. The person must comply with the order and pay any penalty assessed.

(f)(1) If the person charged with the violation requests a hearing, the commissioner shall order a hearing and shall give written notice of that hearing.

(2) The hearing shall be held by a hearing examiner designated by the commissioner.

(3) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation on suspension of the discharge prevention and response certificate, the amount of any proposed penalty, the removal or disposal of the derelict vessel or structure, or any combination of those remedies.

(4) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may:

(A) find that a violation has occurred and assess a penalty;

(B) suspend a discharge prevention and response certificate;

(C) order the removal or disposal of a derelict vessel or structure;

(D) order any combination of those remedies; or

(E) find that no violation occurred.

(5) The commissioner shall serve notice to the person of the commissioner's decision. If the commissioner finds that a violation has occurred and assesses a penalty, suspends a discharge prevention and response certificate, or orders the removal or disposal of a derelict vessel or structure, the commissioner shall give to the person written notice of:

(A) the commissioner's findings;

(B) the amount of the penalty or the terms of the suspension or removal or disposal; and

(C) the person's right to judicial review of the commissioner's order.

(g)(1) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the violation shall comply with the order or file a petition for judicial review.

(2) On failure of the person to comply with the order or file a petition for judicial review, the commissioner may refer the matter to the attorney general for collection and enforcement.

(3) Judicial review of the order or decision of the commissioner shall be under Subchapter G, Chapter 2001, Government Code.

(h)(1) If a penalty is reduced or not assessed, the commissioner shall remit to the person charged with the violation the appropriate amount of any penalty payment plus accrued interest.

(2) Accrued interest on amounts remitted by the commissioner shall be paid for the period beginning on the date the penalty is paid to the commissioner and ending on the date the penalty is remitted at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(i) Payment of an administrative penalty under this section shall preclude, in any action brought under this chapter, collection of a civil penalty for the violation specified in the commissioner's order.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 13, 14, 16, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 216, Sec. 4, eff. Sept. 1, 2005.

Sec. 40.255. ACTIONS. (a) The commissioner may seek injunctive relief to prevent a violation of this chapter from continuing or occurring.

(b) All actions on behalf of the state to enforce this chapter or recover civil penalties, unpaid administrative penalties, claims of the fund, response costs, and damages arising under this chapter shall be brought by the attorney general at the direction of the commissioner. In any such action in which the state prevails, the state shall be entitled to recover reasonable attorney fees.

(c) Repealed by Acts 1993, 73rd Leg., ch. 776, Sec. 10, eff.

Sept. 1, 1993.

(d) Each owner or operator of a terminal facility or vessel subject to the provisions of this chapter shall designate a person in the state as his legal agent for service of process, and such designation shall be filed with the secretary of state. In the absence of such designation, the secretary of state shall be the designated agent for purposes of service of process under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 10, eff. Sept. 1, 1993.

Sec. 40.256. INDIVIDUAL CAUSE OF ACTION. The remedies in this chapter are cumulative and not exclusive. This chapter does not require pursuit of any claim against the fund as a condition precedent to any other remedy, nor does this chapter prohibit any person from bringing an action at common law or under any other law not inconsistent with this chapter for response costs or damages resulting from a discharge or other condition of pollution covered by this chapter. No such action shall collaterally estop or bar the commissioner in any action brought by the commissioner under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.257. VENUE. (a) Venue for all actions and prosecution of all offenses under this chapter may be brought in Travis County or in any county where the violation of this chapter that is the subject of the action or prosecution occurred.

(b) All appeals from administrative proceedings under this chapter shall be filed in a district court of Travis County, Texas, pursuant to Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.258. FEDERAL LAW. (a)(1) The commissioner shall promulgate rules that, to the greatest extent practicable, conform to the national contingency plan and rules promulgated under federal law.

(2) The commissioner may impose requirements under such rules that are in addition to or vary materially from federal requirements if the state interests served by the requirements substantially outweigh the burdens imposed on those subject to the requirements.

(3) Any request for judicial review of any rule must be filed in a district court in Travis County within 90 days of the effective date of the rule or plan challenged.

(4) Any matter subject to judicial review under Subdivisions (1) through (3) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or for recovery of response costs or damages.

(b) In implementing this chapter, the commissioner to the greatest extent practicable shall employ federal funds unless federal funds will not be available in an adequate period of time.

(c) All federal funds received by the state relating to response to unauthorized discharges of oil under this chapter shall be deposited in the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 15, eff. Sept. 1, 2003.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

Sec. 40.301. INTERSTATE COMPACTS. The commissioner may enter into compacts or agreements with other states consistent with and to further the purposes of this chapter. The commissioner may also participate in initiatives to develop multistate and international standards and cooperation on unauthorized discharge prevention and response.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.302. INSTITUTIONS OF HIGHER EDUCATION. The commissioner by interagency contract shall enter into agreements with state institutions of higher education for research, testing, and development of oil discharge prevention and response technology, oil discharge response training, wildlife and natural resources rescue and rehabilitation, development of computer models to predict the movements and impacts of unauthorized discharges of oil, and other purposes consistent with and in furtherance of the purposes of this chapter. Contracts or agreements relating to wildlife and aquatic resources shall be made

in coordination with the Parks and Wildlife Department. To the greatest extent possible, contracts shall be coordinated with studies being done by other state agencies, the federal government, or private industry to minimize duplication of efforts.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.304. SMALL SPILL EDUCATION PROGRAM. The commissioner shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, offshore support vessels, ferries, cruise ships, ports, marinas, and recreational boats. The small spill education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of motor oil and hydraulic fluid during routine maintenance, and spills during refueling. The program shall illustrate proper disposal of oil and promote strategies to meet shoreside oil handling and disposal needs of targeted groups. The program shall include a series of training materials and workshops and the development of educational materials.

Added by Acts 1993, 73rd Leg., ch. 776, Sec. 11, eff. Sept. 1, 1993.